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No. 93-1206

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In The

# Supreme Court of the United States

October Term, 1993

BEXAR COUNTY APPRAISAL REVIEW BOARD and BEXAR COUNTY APPRAISAL DISTRICT,

*Petitioners,*

*vs.*

FIRST BAPTIST CHURCH OF SAN ANTONIO and VALERO REALTY COMPANY,

*Respondents.*

*On Petition for Writ of Certiorari to the Fourth Court of Appeals District of Texas, San Antonio*

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTIONS PRESENTED FOR REVIEW

For the reasons set forth hereafter, Respondents would advance that no question within the jurisdiction of this Court to decide has been properly presented by one with standing to do so. However, even if Petitioners overcome the jurisdictional and standing infirmities in their case, the questions presented are not appropriatedly framed in that:

(1) As to Petitioners' question one, there is no legal or factual basis for the allegation that religious organizations are more favorably treated than similiarly qualified secular organizations under Texas' property tax exemption scheme;

(2) As to Petitioners' question two, there is no legal or factual basis for the allegation that the state is required to subjectively determine, on a case by case basis, whether property owned by a religious organization is used primarily for religious worship under Texas' judicial application of Texas' propery tax exemption laws.

(3) As to Petitioners' question three, there is no legal or factual basis for the allegation that the church in this case uses the subject property for commercial profit-making purposes.

## LIST OF ALL PARTIES

**Petitioners:**

A. Bexar County Appraisal Review Board (a political subdivision of the State of Texas);

B. Bexar County Appraisal District (Walter Stoneham, Chief Appraiser), a political subdivision of the State of Texas.

**Respondents:**

A. First Baptist Church of San Antonio, a non-profit religious organization;

B. Valero Realty Company, a Delaware corporation; a wholly owned subsidiary of Valero Energy Corporation, a Delaware corporation.

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## OPINIONS BELOW

Petitioners have correctly stated the citations of the opinions and judgments delivered in the courts below.

## STATEMENT OF JURISDICTION

Petitioners seek to invoke the jurisdiction of the Court pursuant to 28 U.S.C. § 1257. The Court's jurisdiction on this basis is suspect because Petitioners, in order to avail themselves of the privilege of seeking a writ from this Court must have standing to claim that the statute which they seek to have declared invalid is "repugnant to the Constitution . . ." Petitioners, in their framing of the questions presented for review; their statement of jurisdiction, their statement of the case, and their statements with reference to reasons for granting the writ set up an equal protection argument under the Fourteenth Amendment. Petitioners, as political subdivisions of the state of Texas, are without standing to raise an equal protection challenge to a statute of the state which created the political subdivisions. As Petitioners do not have privileges or immunities under the federal Constitution which they may invoke in opposition to the will of the state which created them, and are thus without standing, no federal question is presented for this Court's review under 28 U.S.C. § 1257.

Petitioners do accurately set forth the time factors relative to their filing.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

### First Amendment

The First Amendment to the Constitution of the United States provides in relevant part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .

Petitioners correctly quote the Fourteenth Amendment, and § 11.20, Texas Property Tax Code. Other statutes which the case involves are the other 30 exemption provisions set forth in Chapter 11 of the Texas Property Tax Code, the full text of which is printed in theAppendix pages 1a through 43a, and the following provisions of the Texas Property Tax Code, which provide in relevant part:

> Section 23.13. Taxable Leaseholds.
>
> A taxable leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest incumbered by the possessory interest is appraised at the market value of the leasehold or other possessory interest. However, the appraised value may not be less than the total rental paid for the interest for the current tax year,

Section 25.07., Texas Property Tax Code provides, in relevant part:

> (a) except as provided in sub §(b) of this section, a leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest incumbered by the possessory interest shall be listed in the name of the owner of the possessory interest if the duration of the interest may be at least one year.

The full text of each of the cited statutory provisions are reprinted at Appendix pages 1a through 43a to the extent that they have not been printed in Petitioners' Petition.

## STATEMENT OF THE CASE

The Church's two primary parking lots, located adjacent to the Church in downtown San Antonio, Texas are the subject of a lease agreement with Valero Realty Company for a ten year term beginning in 1980. Valero pays the Church $275 per year per parking space for the right of access to the lots during normal business hours on working days. The Church reserves 40 of the spaces for a full time use to the exclusion of Valero. The Church has exclusive possession of the lots at all other times.

The Church does not make a "profit" from the arrangement with Valero. Rather, all income is devoted to the upkeep and maintenance of the Church complex as a whole. Valero makes no "profit" by virtue of its arrangement with the Church. Valero does not sublease the property, or use it for any purpose other than as a place for Valero employees to park during normal business hours. The lots are necessary for the Church to function. They are the primary parking lots utilized by the Church's congregation for worship services on Sundays, Wednesdays, Revivals, Vacation Bible School, and the like. The Church first applied for an exemption on the property with the Bexar Appraisal District in 1984. The exemption was denied, the denial was affirmed by the Appraisal Review Board, and the suit below commenced. Tax years 1985 and 1986 were added to the 1984 suit following the same result in each of the successive years. In each year, the Church was required to pay to the various taxing units served by the Appraisal District, the taxes assessed by the taxing units, in the absence of an exemption, in order to maintain its suit as required by Texas property tax law. Petitioners correctly set forth the result in the trial court favorable to the Church, and the subsequent disposition of the various appeals.

Petitioners raised their "unconstitutional as applied" arguments in the trial court in a timely fashion; Respondents interposed their standing argument. Petitioners made it clear as is demonstrated by the appendices to Petitioners' brief that Petitioners were not then challenging the constitutionality of § 11.20 or for that matter, the constitutionality of any provision of Chapter 11, Texas Property Tax Code. Petitioners' Petition for Writ of Certiorari pages 67a through 68a. Petitioners did not then, nor did they in connection with their petition in this Court, notify the Attorney General of the State of Texas of their challenge to the constitutionality of a state statute as they are required to do under Texas law in order to properly challenge the statute. Indeed, Petitioners carefully crafted their arguments in the courts below to assert an "unconstitutional as applied" argument as opposed to a direct challenge to the statute. Petitioners never filed an Application for Declaratory Relief with reference to the constitutionality of the statute in the court below. It would appear from Petitioners' Petition here that Petitioners are, for the first time, directly challenging the constitutionality of the statute, and the statutory scheme on its face.

## REASONS FOR DENYING THE WRIT

Petitioners do not, as political subdivisions of this state, have standing to bring a challenge to a state statute on equal protection or due process grounds.

Petitioners concede that they are political subdivisions of the state of Texas. Petitioners' Petition pages 1 and 2. Petitioners seek to have this Court declare as unconstitutional Texas' property tax scheme relative to the granting of an exemption to qualified Church real property on equal protection grounds. Petitioners advance that Texas' scheme favors religion, to the exclusion of secular organizations, and that it is not equal or uniform in its applications or results. Petitioners invoke the Fourteenth

Amendment of the United States Constitution as their vehicle for bringing this equal protection challenge. Petitioners are unable, as a matter of law, to "invoke the protection of the Fourteenth Amendment" against its own state. *City of Newark v. New Jersey* 262 U.S. 192, 196, 43 S. Ct. 539, 540, 67 L. Ed. 943 (1923); *Williams v. Mayor and City Council of Baltimore,* 298 U.S. 36, 40, 53, S. Ct. 431, 432, 77 L. Ed. 1015 (1933); *City of Trenton v. State of New Jersey,* 262 U.S. 182, 185, 43 S. Ct. 534, 536, 67 L. Ed. 937 (1923); *see also, South Macomb Disposal Authority v. Township, of Washington,* 790 F.2d 500, 505 (6th Cir. 1986). The Petitioners, as political subdivisions of this state, have no protected rights granted them by the Fourteenth Amendment and are not "persons" within the meaning of the Fourteenth Amendment. *See id.* If further argument be needed, the Bexar Appraisal District is not another disaffected taxpayer as was the case in *Walz v. Tax Commission,* 397 U.S. 664 (1970) nor was the case in *Texas Monthly, Inc. v. Bullock,* 498 U.S. 1 (1989). Bexar Appraisal District, by statute, has no interest in the raising of tax revenues, but rather is charged with appraising taxable property for the benefit of the taxing units which it serves. Texas Property Tax Code § 6.01. *See also, Charles Schriener Bank of Kerrville, et al. v. Kerrville I.S.D., et al.,* 683 S.W. 2d 466 (Tex. App.-San Antonio 1984). Thus, even if arguably the Bexar Appraisal District had some "interest" in the result of the denial or granting of an exemption from taxation of Church-owned property, it cannot be on the basis of an interest in the generation of tax revenue. Indeed, the granting or denial of an exemption for the Church does not affect the Appraisal District monetarily in any fashion. As a political subdivision of this state, the Appraisal District and its property is exempt from property taxation, as is the Church. Texas Property Tax Code, § 11.11.

The proper course for Petitioners to have taken, if they seriously believed that Texas' property tax scheme was constitutionally infirm, would have been to have brought such action under Texas Civil Practices and Remedies Code, § 37.001 *et seq.* (Uniform Declaratory Judgments Act), after proper notice to

the state's attorney general, with a right to resort to appeal in the state system as provided by state law. Relevant portions of the Act are reproduced at Appendix B, pp. 44a-45a. Petitioners took no such tact in the case below. Rather, Petitioners told the state trial court repeatedly that they were not challenging the constitutionality of the Texas property tax scheme. Petitioners' Petition pages 67a through 68a. One must surmise that they took this position in order to avoid the requirement of filing a suit for declaratory relief and joining the state attorney general. Having exhausted all state court appeals, Petitioners now come to this Court and for the first time directly challenge the validity of Texas' property tax scheme facially on Fourteenth Amendment grounds. Yet they still have not notified the state attorney general of the existence of the lawsuit in the state court much less the existence of their petition for writ in this Court. As they did not raise a direct constitutional challenge to the validity of the statutes on their face in the courts below, they cannot raise them here for the first time. In any event, for the reasons stated, and based on the authorities above cited, Petitioners are without standing to bring such a challenge to a statute promulgated by the very state which created them.

## I.

## THE STATE COURT HAS NOT DECIDED A FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISION OF ANOTHER STATE COURT OF LAST RESORT OR OF THE UNITED STATES COURT OF APPEALS.

Notwithstanding Respondents' challenge to Petitioners' standing in the courts below, the "Court of Last Resort" specifically addressed the Petitioners' "unconstitutional as applied" argument relative to the application of the Texas property tax scheme to the circumstances of this case. *Bexar Appraisal Review Board et al. v. First Baptist Church et al.*, 846 S.W. 2d 554,

559 (Tex. App.-San Antonio 1993, writ denied). The state court looked to, for guidance, this Court's opinion in *Walz v. Tax Commission*, 397 U.S. 664, 90 S. Ct. 1409 (1970) and found the facts and circumstances of this case to be consistent with the analysis by this Court in *Walz*. Respondents have found no reported case involving a federal question which is at odds with the analysis of the Texas Court of Appeals in this case. *See, e.g., Town of Hardenburgh, Ulster County, et al. v. State of New York, et al.*, 439 N.Y. 2d 303, 52 N.Y. 2d 536, 421 N.E. 2d 795 (1981) (religious real property exemption is constitutional; political subdivisions had no standing to challenge validity of state exemption statute as against a state on constitutional grounds); *Indian Hills Community Church v. County Board of Equalization of Lancaster County, et al. v. County Board of Equalization of Lancaster County, et al.*, 412 N.W. 2d 459, 226 Neb. 510 (S. Ct. Neb. 1987) (the First Amendment does not prohibit state's requirements that religious organizations comply with state statutes which reasonably prescribe bases or procedures to obtain exemption from state taxation) (no "excessive entanglement"); *Central Baptist Church of Miami, Florida Inc. v. Dade County, Florida, et al.*, 216 So. 2d 4 (S. Ct. Fla. 1968) (part-time rental of portion of Church parking lot for commercial parking during week day business hours does not eliminate tax exemption under Florida law); *Diffenderfer v. Central Baptist Church of Miami, Florida, et al.*, 316 F. Supp. 1116 (S.D. Fla. 1970), *appeal vacated*, 404 U.S. 412, 92 S. Ct. 574, 30 L. Ed. 567 (1972) (state tax exemption scheme which extends exemption to Church parking lot leased part-time to commercial enterprise does not violate the First Amendment).

The last cited case relied principally on this Court's prior holding in *Walz v. Tax Commission, supra.* As such, the decision of the Texas court of last resort is in accord with the decision of other courts of last resorts in other states; the decisions of United States Courts of Appeals and, indeed, with the holdings of this Court.

## II.

## NO EXCESSIVE ENTANGLEMENT.

Texas' property tax scheme relating to religious real property exemptions requires only that:

1. the property be owned by a religious organization;

2. the property be used primarily as a place of regular religious worship; and

3. the property be reasonably necessary for engaging in religious worship.

"Religious worship" is broadly defined at subsection (e) of § 11.20:

> "Religious worship" means individual or group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment on behalf of a religious faith.

Further, the qualifications of a group as a religious organization is broadly defined at subsection (c) of § 11.20 (*see* Appendix pages 12-14).

The question of whether the First Baptist Church of San Antonio was a religious organization, or what its motives or intents were or are was never an issue in this case. Further, once the exemption is granted, it need not be reapplied for in subsequent years. Section 11.43(c), Texas Property Tax Code. In other words, the religious organization must only meet the requirements of § 11.20 to the satisfaction of the chief appraiser in order to qualify for the exemption and the Church is not thereafter required to apply

for an exemption in subsequent years so long as the circumstances giving rise to the initial exemption have not changed. True, the exemption is not "self-executing," but the requirements of the state of Texas relating to an exemption from taxation of religious real property are not so burdensome as to create an excessive entanglement between the Church and state. Indeed, as the Nebraska Supreme Court observed in *Indian Hills Community Church v. The County Board of Equalization of Lancaster County, supra,* (412 N.W. 2d 459, 463): "nothing in *Walz* supports a premise or conclusion that the First Amendment to the United States Constitution prohibits a State's requirement that a religious organization must comply with a state's statutes which reasonably prescribe a basis or procedure to obtain an exemption from state taxation."

## III.

## THE TEXAS STATUTE DOES NOT FAVOR RELIGIOUS ORGANIZATIONS OVER SECULAR ORGANIZATIONS.

At Chapter 11 of the Texas Property Tax Code (subtitle C, Chapter 11, Texas Property Tax Code): "Taxable Property and Exemptions," some 30 classes or categories of property are entitled to an exemption from taxation by the state, vis:

Section 11.02. (Intangible Personal Property exempt) (self-executing).

Section 11.11. (Public property owned by state or political subdivision of the state exempt) (self-executing).[1]

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1. Although exclusive public use is required by the statute, Texas' attorney general has consistently concluded that such public property, leased to private individuals is exempt if the income is properly used. Op. Tex. Att. Gen. JM 405 (1985); Op. Tex. Att. Gen. JM-1049 (1989).

Section 11.12. (Property exempt by federal law is exempt) (self-executing).

Section 11.13 (Partial exemption for residence homesteads) (application and qualification required).

Section 11.14. (Tangible Personal Property Not Producing Income exempt) (self-executing).

Section 11.15. (Family Supplies for home or farm use exempt) (self-executing).

Section 11.16. (Farm Products exempt) (self-executing).

Section 11.161. (Implements of Farming or Ranching exempt) (self-executing).

Section 11.17. (Not-for-profit cemetery is exempt) (application required).

Section 11.18. (Charitable Organizations; land, buildings, and tangible personal property of qualified charitable organizations exempt) (application required) (exclusive use required, provided that incidental use which is beneficial to the charitable organization does not destroy exemption).

Section 11.19. (Youth, Spiritual, Mental and Physical Development Associations) (tangible property owned by the association and used exclusively by the association is exempt from taxation provided that incidental use by others of the property beneficial to the associations does not destroy exemption) (application required).

Section 11.20. (Religious Organizations) (real property owned by the organization, used primarily as a place of regular

religious worship, and reasonably necessary for engaging in religious worship is exempt from taxation provided that occasional secular use of the property by others does not destroy exemption so long as income from the other use is properly used by the organization) (application required).

Section 11.21. (Schools) (tangible property of schools exempt if used in the school and if operated exclusively by the person owning the property provided that incidental use of the property which benefits the students or faculty of the school does not destroy the exemption) (application required).

Section 11.22. (Disabled Veterans) (partial exemption on certain real property for disabled veterans) (application required).

Section 11.23. (Miscellaneous Exemptions).

A. Veteran's Organizations (exemption from taxation for real property owned by the Veteran's organizations which is primarily used by the organization, and is reasonably necessary for the use of the organization provided that occasional renting of the property does not destroy the exemption if the proceeds from the rental are properly used) (application required).

B. Federation of Women's Clubs (tangible property exempt from taxation) (application required) (no "exclusive use" required).

C. Nature Conservancy of Texas (tangible property exempt) (application required) (no requirement of exclusive use).

D. Congress of Parents and Teachers (tangible property including land that is reasonably necessary for the use of, access to, or ornamentation of the buildings, owned by the Congress and used as its state headquarters is exempt).

E. Private Enterprise Demonstration Associations (tangible property owned and used exclusively and reasonably necessary for the association's operation is exempt) (application required).

F. Buffalo and Cattalo (Buffalo and Cattalo, not held for gain and used in experimental breeding with cattle exempt).

G. Theater Schools (qualified nonprofit corporations entitled to an exemption from taxation of the property it owns and uses in the operation of the school; no exclusive use required; application required).

I. Community Service Clubs (qualified non profit community service clubs entitled to exemption from taxation on property that it owns which is not held for gain; no exclusive use required; application required).

J. Medical Center Development (real and personal property owned by qualified nonprofit corporation and held for use in the development of the Medical Center area or areas exempt; application required).

K. Scientific Research Corporations (qualified nonprofit corporations entitled to exemption from taxation of property it owns and uses in scientific research and education; non-scientific research and education use does not destroy exemption if other functions are incidental to use of property for scientific research and education activities and benefit the non-profit corporation or the colleges and universities they support) (application required).

Section 11.24. (Historic Sites) (qualified historical sites, as well as the structure and the land necessary for access to and use of the structure exempt from taxation in whole or in part).

Section 11.25.1. (Tangible Personal property exempt; certain

"freeport goods" and goods in interstate commerce exempt under certain circumstances) (application required).

Section 11.27. (Solar and Wind-Powered Energy Devices used primarily for the production and distribution of energy for on site use exempt from taxation; application required).

Section. 11.27 1. (Offshore Drilling Equipment Not in Use is entitled to exemption from taxation).

Section 11.29. (Intracoastal Waterway Dredge Disposal Sites dedicated by recorded donated easement exempt from taxation).

Section 11.30. (Nonprofit Water Supply and Wastewater Service Corporations); (tangible property owned by the corporation and reasonably necessary for and used in the operation of the corporation exempt from taxation).

As is obvious from the foregoing, Texas' property tax exemption scheme is reasonable and even-handed as it relates to the diverse groups, organizations, and individuals, including religious organizations which are entitled to an exemption from taxation within certain criteria as prescribed by the Legislature. Granted each exemption provided for in Chapter 11 is not exactly the same. The provisions, however, are so reasonably similar that no intent to either advance or inhibit religious organizations as compared to the other broad based non-sectarian groups afforded exemptions under Chapter 11 is evidenced.

## IV.

## NO "STATE SUBSIDY" IS CREATED.

The commercial use of exempt property is taxable in Texas generally, and this property in particular. Section 23.13, Property

Tax Code (Taxable Leaseholds). Petitioners fail to point out to the Court that the Texas Legislature in enacting § 23.13 has recognized the practical realities within a modern, urban society. Private individuals and companies often compete with organizations entitled to an exemption for ownership and/or use of real property especially in congested downtown areas. Quite unlike the New York scheme approved by this Court in *Walz,* and indeed quite unlike the Florida scheme approved by the Federal District Court in Florida in *Diffenderfer,* Texas has specifically provided for the taxation of the commercial use of property which is otherwise exempt to the qualifying owner of the property. Sections 23.13 and 25.07 Texas Property Tax Code provide that where a property is exempt, but is leased to another, that the property be listed on the tax rolls in the lessee's name, and the lessee's taxable leasehold interest in the exempt property be appraised and taxed at its market value. Indeed, the statute provides that the commercial use of that property will always be taxed, since at a minimum, a tax is based upon a value of the property which can never be less than the annual rental paid on the property. The Legislature has carefully balanced the state and its subdivision's need to tax commercial property against the sound public policy of exempting from taxation property owned, and used by, and reasonably necessary for use by religious, charitable, and public organizations. By providing for the taxation of the commercial use of an exempt property, the state has insured that owners of property competing in the open market with the lessees of exempt property are not disadvantaged by the lessee's "tax break" and has further insured that religious organizations, charitable organizations, and the government cannot entice private enterprise into commercial lease arrangements on the premise that as lessees, they will not be reasponsible for the payment of property taxes. The state has also reasonably required the government, charitable organizations, religious organizations, and the like, to dedicate any income which those organizations receive from the other use of their exempt property to charitable, religious, or governmental purposes or that

property loses its exemption. Texas has adopted a thoughtful, well-reasoned, and even-handed approach by providing for circumstances for qualified organizations to be entitled to an exemption from taxation of their real property, but also providing that the state will receive its tax dollars from any commercial use to which that exempt property is put. Under these circumstances, no church is favored over another church, no church is burdened where another church is not; no religious organization is favored or burdened in a manner inconsistent with the benefits and burdens placed on a broad based non-sectarian group of which religious organizations are a part. Even if Petitioners have standing to make a Fourteenth Amendment argument, the argument must fail on its merits since the state of Texas has gone out of its way to insure that religious organizations are treated no differently than other similarly situated groups.

## V.

## THERE IS NO ISSUE WHICH NEEDS TO BE RESOLVED BY THIS COURT.

Petitioners cite the dissent in another case, and the concurring opinion of a justice of the Texas Supreme Court in this case in support of their position that this Court should resolve uncertainties. However, there are no uncertainties in the majority opinion of the Court in the *City of Austin v. University Christian Church*, 768 S.W. 2d 718 (Tex. 1988), or this case. *First Baptist Church of San Antonio v. Bexar County Appraisal Review Board*, 833 S.W. 2d 108 (Tex. 1992). The analysis of the law by the Texas Supreme Court in each of those cases is not just consistent, it is identical. Dissents and concurring opinions are interesting, but they are not the law. The law is set forth in the majority opinions of the court and they are entirely uniform and consistent. It is true that the ultimate result in the *City of Austin* case was that the property in question was taxable. However, that case was fraught with

procedural difficulties (such as the Church's failure to exhaust its administrative remedies) which were not present in this case. Further, there were significant factual differences in the two cases. The fact remains that the jury in this case, after being properly instructed upon the law, and after having heard a week of evidence from both sides, found that the property was entitled to an exemption. The trial court ordered Valero's leasehold interest in the exempt property to be appraised and taxed. The latter circumstance was certainly not part of the case in the *City of Austin* matter.

Finally, it is disingenuous at best to suggest to the Court that because other churches in San Antonio lease their parking lots to private business but do not enjoy a property tax exemption, that this should form the basis of this Court's review of the facts and circumstances of this case by way of certiorari. As stated above, it should be one of these other churches with standing to raise the equal protection issue which brings the challenge if one is to be brought, and not the political subdivision which is presently before the Court. While is it certainly not part of this record what the circumstances of the other churches are, one must surmise that they are either not interested in seeking an exemption, or, more likely, they are awaiting the final outcome of this case before spending precious church dollars in a ten year fight with the government as First Baptist has been required to do. This issue, totally outside the record of this case, is a non-issue and should be disregarded by the Court.

## CONCLUSION

The Petitioners, political subdivisions of the state, have no Fourteenth Amendment rights, or other privileges or immunities under the federal Constitution which they may invoke in opposition to the will of their creator. *Trenton v. New Jersey*, 262 U.S. 182, 433 S. Ct. 534, 67 L. Ed. 937. Petitioners show no

personal harm, for indeed there is none occasioned upon them by the results of this case. This is purely a state court matter, and it has been decided by the court of last resort in this state. None of Petitioners' complaints, even if they had standing, rise to the level of an important federal question which should be decided by this Court. No Texas decision is at odds with any decision of this Court, the Circuit Courts, or the Supreme Courts of other states. Texas' well thought out, and carefully balanced property tax exemption scheme does not favor or disfavor religious or other similarly situated secular organizations, one over the other. Texas' scheme goes even further: it provides for the taxation of any commercial use of property that is otherwise exempt.

Both procedurally, and on the merits, Petitioners' Petition for Writ of Certiorari in this Court must fail. Respondents request that the Petition be denied and dismissed by this Court, and that the State of Texas' interpretation and application of its own statutes be left to stand.

Respectfully submitted,

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## APPENDIX A — CHAPTER ELEVEN OF THE TEXAS PROPERTY TAX CODE

Subchapter A. Taxable Property

***Sec. 11.02. Intangible Personal Property.***

(a) Except as provided by Subsection (b) of this section, Intangible personal property is not taxable.

(b) Intangible property of a transportation business listed in Subchapter A, Chapter 24 of this code, and intangible property governed by Article 4.01, Insurance Code, or by Section 11.09, Texas Savings and Loan Act, are taxable as provided by law, unless exempt by law, if this state has jurisdiction to tax those intangibles.

(c) This state has jurisdiction to tax intangible personal property if the property is:

(1) owned by a resident of this state; or

(2) located in this state for business purposes.

(d) Repealed in 1984.

***Sec. 11.11. Public Property.***

(a) Except as provided by Subsection (b) and (c) of this section, property owned by this state or a political subdivision of this state is exempt from taxation if the property is used for public purposes.

(b) Land owned by the Permanent University Fund is taxable for county purposes. Any notice required by

Section 25.19 of this code shall be sent to the comptroller, and the comptroller shall appear in behalf of the state in any protest or appeal relating to taxation of Permanent University Fund land.

(c) Agricultural or grazing land owned by a county for the benefit of public schools under Article VII, Section 6, of the Texas Constitution is taxable for all purposes. The county shall pay the taxes on the land from the revenue derived from the land. If revenue from the land is insufficient to pay the taxes, the county shall pay the balance from the county general fund.

(d) Property owned by the state that is not used for public purposes is taxable. Property owned by a state agency or institution is not used for public purposes if the property is rented or leased for compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state agency or institution or used to provide private residential housing for compensation to members of the public other than students and employees of the state agency or institution owning the property, unless the residential use is secondary to its use by an educational institution primarily for instructional purposes. Any notice required by Section 25.19 of this code shall be sent to the agency or institution that owns the property, and it shall appear in behalf of the state in any protest or appeal related to taxation of the property.

(e) It is provided, however, that property that is held or dedicated for the support, maintenance, or benefit of an institution of higher education as defined in Chapter 61, Texas Education Code, but is not rented or leased for

compensation to a private business enterprise to be used by it for a purpose not related to the performance of the duties and functions of the state or institution or is not rented or leased to provide private residential housing to members of the public other than students and employees of the state or institution is not taxable. All oil, gas, and other mineral interests owned by an institution of higher education are exempt from all ad valorem taxes. Property bequeathed to an institution is exempt from the assessment of ad valorem taxes from the date of the decedent' death, unless:

(1) the property is leased for compensation to a private business enterprise as provided in this subsection; or

(2) the transfer of the property to an institutions contested in a probate court. In this case, ad valorem taxes shall be assessed to the estate of the decedent until the final determination of the disposition of the property is made. The property is exempt from the assessment of ad valorem taxes upon vesting of the property in the institution.

(f) Property of a higher education development foundation or an alumni association that is located on land owned by the state of the support, maintenance, or benefit of an institution of higher education as defined in Chapter 61, Education Code, is exempt from taxation if:

(1) the foundation or organization meets the requirements of Sections 11.18(e) and (f) and is organized exclusively to operate programs or

perform other activities for the benefit of institutions of higher education; and

(2) the property is used exclusively in those programs or activities.

(g) For purposes of this section, an improvement is owned by the state and is used for public purposes if it is:

(1) located on land owned by the Texas Department of Corrections; leased and used by the department; and

(2) subject to a lease-purchase agreement providing that legal title to the improvement passes to the department at the end of the lease period.

***Sec. 11.12. Federal Exemptions.***

Property exempt from ad valorem taxation by federal law is exempt from taxation.

***Sec. 11.13. Residence Homestead.***

(a) A family or single adult is entitled to an exemption from taxation for the county purposes authorized in Article VIII, Section 1-a, of the Texas Constitution of $3,000 of the assessed value of his residence homestead.

(b) An adult is entitled to exemption from taxation by a school district of $5,000 of the appraised value of his residence homestead.

(c) In addition to the exemption provided by Subsection (b)

of this section, an adult who is disabled or is 65 or older is entitled to an exemption from taxation by a school district of $10,000 of the appraised value of his residence homestead.

(d) In addition to the exemptions provided by Subsections (b) and (c) of this section, an individual who is disabled or is 65 or older is entitled to an exemption from taxing units of a portion (the amount of which is fixed as provided by Subsection (e) of this section) of the appraised value of his residence homestead if the exemption is adopted either:

(1) by the governing body of the taxing unit other than a county education district;

(2) by a favorable vote of a majority of the qualified voters of the taxing unit at an election called by the governing body of the taxing unit other than a county education district, and the governing body shall call the election on the petition of at least 20 percent of the number of qualified voters who voted in the preceding election of the taxing unit; or

(3) by a favorable vote of a majority of the qualified voters of a county education district at an election held under Section 20.950, Education Code.

(e) The amount of an exemption adopted as provided by Subsection (d) of this section is $3,000 of the appraised value of the residence homestead unless a larger amount is specified by:

(1) the governing body authorizing the exemption if the exemption is authorized as provided by Subdivision (1) of Subsection (d) of this section;

(2) the petition for the election if the exemption is authorized as provided by Subdivision (2) of Subsection (d) of this section; or

(3) the proposition approved at an election held under Section 20.950, Education Code.

(f) Once authorized, an exemption adopted as provided by Subsection (d) of this section may be repealed or decreased or increased in amount by the governing body of the taxing unit or by the procedure authorized by Subdivision (2) of Subsection (d) of this section. In the case of a decrease, the amount of the exemption may not be reduced to less than $3,000 of the market value.

(g) If the residence homestead exemption provided by Subsection (d) of this section is adopted by a county that levies a tax for the county purposes authorized by Article VIII, Section 1-a, of the Texas Constitution, the residence homestead exemptions provided by Subsections (a) and (d) of this section may not be aggregated for the county tax purposes. An individual who is eligible for both exemptions is entitled to take only the exemption authorized as provided by Subsection (d) of this section for purposes of that county tax.

(h) Joint or community owners may not each receive the same exemption provided by or pursuant to this section

for the same residence homestead in the same year. An eligible disabled person who is 65 or older may not receive both a disabled and an elderly residence homestead exemption but may choose either.

(i) The assessor and collector for a taxing unit may disregard the exemptions authorized by Subsection (b), (c), (d), or (n) of this section and assesses and collect a tax pledged for payment of debt without deducting the amount of the exemption if:

(1) prior to adoption of the exemption, the unit pledged the taxes for the payment of a debt; and

(2) granting the exemption would impair the obligation of the contract creating the debt.

(j) For purposes of this section, "residence homestead" means a structure (including a mobile home) or a separately secured and occupied portion of a structure (together with the land, not to exceed 20 acres, and improvements used in the residential occupancy of the structure, if the structure and the land and improvements have identical ownership) that:

(1) is owned by one or more individuals;

(2) is designed or adapted for human residence;

(3) is used as a residence; and

(4) is occupied as his principal residence by an owner who qualifies for the exemption.

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(k) A qualified residential structure does not lose its character ad a residence homestead if a portion of the structure is rented to another or is used primarily for other purposes that are incompatible with the owner's residential use of the structure. However, the amount of any residence homestead exemption does not apply to the value of that portion of the structure that is used primarily for purposes that are incompatible with the owner's residential use.

(l) A qualified residential structure does not lose its character as a residence homestead when the owner who qualifies for the exemption temporarily stops occupying it as a principal residence if that owner does not establish a different principal residence and intends to return and occupy the structure as his principal residence.

(m) In this section:

(1) "Disabled" means under a disability for purposes of payment of disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance.

(2) "School district" means a political subdivision organized to provide general elementary and secondary public education. "School district" includes a county education district established by the consolidation of the local school districts in its boundaries for the limited purpose of exercising a portion of the taxing power previously authorized by the voters In those school districts. "School district" does not include a junior college district or

a political subdivision organized to provide special education services.

(n) In addition to any other exemptions provided by this section, an individual is entitled to an exemption from taxation by a taxing unit other than a county education district of a percentage of the appraised value of his residence homestead if the exemption is adopted by the governing body of the taxing unit before May 1 in the manner provided by law for official action by the body. If the percentage set by the taxing unit produces an exemption in a tax year of less than $5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of $5,000 of the appraised value. The percentage adopted by the taxing unit may not exceed 20 percent. In addition to any other exemptions provided by this section, an individual is entitled to an exemption from taxation by a county education district of a percentage of the appraised value of his residence homestead if the exemption is adopted by the voters of the district at an election held in the district for that purpose under Section 20.496, Education Code. If the percentage set by the voters produces an exemption in a tax year of less than $5,000 when applied to a particular residence homestead, the individual is entitled to an exemption of $5,000 of the appraised value. The percentage adopted by the voters may not exceed 20 percent.

(o) For purposes of this section, a residence homestead also may consist of an interest in real property created through ownership of stock in a corporation Incorporated under the Cooperative Association Act

(Article 1396-50.01, Vernon's Texas Civil Statutes) to provide dwelling places to its stockholders if:

(1) the interest of the stockholders of the corporation are appraised separately as provided by Section 23.19 of this code in the tax year to which the exemption applies;

(2) ownership of the stock entitles the owner to occupy a dwelling place owned by the corporation;

(3) the dwelling place is a structure or a separately secured and occupied portion of a structure; and

(4) the dwelling place is occupied as his principal residence by a stockholder who qualifies for the exemption.

(p) Exemption under this section for a homestead described by Subsection (o) of this section extends only to the dwelling place occupied as a residence homestead and to a portion of the total common area used in the residential occupancy that is equal to the percentage of the total amount of the stock Issued by the corporation that is owned by the homestead claimant. The size of a residence homestead under Subsection (o) of this section, including any relevant portion of common area, may not exceed 20 acres.

***Sec. 11.14. Tangible Personal Property Not Production Income.***

(a) A person is entitled to an exemption from taxation of all tangible personal property, other than manufactured

homes, that the person owns and that is not held or used for production of income.

(b) In this section, "manufactured home" has the meaning assigned by Section 11.432 of this code.

(c) The governing body of a taxing unit, other than a county education district, by resolution or order, depending upon the method prescribed by law for official action by that governing body, may provide for taxation of tangible personal property exempted under Subsection (a). The voters of a county education district, by an election held under Section 20.951, Education Code, may provided for taxation of tangible personal property exempted under Subsection (a). If a taxing unit provides for taxation of tangible personal property as provided by this subsection, the exemption prescribed by Subsection (a) does not apply to that unit.

(d) The central appraisal district for the county shall determine the cost of appraising tangible personal property required by a taxing unit under the provisions of Subsection (c) and shall assess those costs to the taxing unit or taxing units which provide for the taxation of tangible personal property.

(e) A political subdivision other than a county education district choosing to tax property otherwise made exempt by this section, pursuant to Article VIII, Section I (e), of the Texas Constitution, may not do so until the governing body of the political subdivision has held a public hearing on the matter, after having given notice of the hearing at the times and in the manner required by

this subsection, and has found that the action will be in the public interest of all the residents of that political subdivision. At the hearing, all interested persons are entitled to speak and present evidence for or against taxing the property. Not later than the 30th day prior to the date of a hearing held under this subsection, notice of hearing must be;

(1) published in a newspaper having general circulation in the political subdivision and in a section of the newspaper other than the advertisement section;

(2) not less than one-half of one page in size; and

(3) republished on not less than three separate days during the period beginning with the 10th day prior to the heating and ending with the actual date of the hearing.

***Sec. 11.15. Family Supplies.***

A family is entitled to an exemption from taxation of its family supplies for home or farm use.

***Sec. 11.16. Farm Products.***

(a) A producer is entitled to an exemption from taxation of the farm products that he produces and owns. A nursery product, as defined by Section 71.041, Agriculture Code, is a farm product for purposes of this section if it is in a growing state.

(b) Farm products in the hands of the producer are exempt.

(c) For purposes of this exemption, the following definitions apply:

(1) "Farm products" includes livestock and poultry.

(2) "In the hands of the producer," for livestock and poultry means under the ownership of the person who is financially providing for the physical requirements of such livestock and poultry on January 1 of the tax year.

***Sec. 11.17. Cemeteries.***

A person is entitled to an exemption from taxation of the property he owns and uses exclusively for human burial and does not hold for profit.

***Sec. 11.18. Charitable Organizations.***

(a) An organization that qualifies as a charitable organization as provided by this section is entitled to an exemption from taxation of the buildings and tangible personal property that:

(1) are owned by the charitable organization; and

(2) except as permitted by Subsection (b) of this section, are used exclusively by qualified charitable organizations.

(b) Use of exempt property by persons who are not

charitable organizations qualified as provided by this section does not result in the loss of an exemption authorized by this section if the use is incidental to use by qualified charitable organizations and limited to activities that benefit the beneficiaries of the charitable organizations that own or use the property.

(c) To qualify as a charitable organization for the purposes of this section, an organization, whether operated by an individual, as a corporation, as a foundation, as a trust, or as an association, must meet the applicable requirements of Subsections (d), (e), (f), and (g) of this section.

(d) A charitable organization must be organized exclusively to perform religious, charitable, scientific, literary, or educational purposes and, except as permitted by Subsection (h) of this section, engage exclusively in performing one or more of the following charitable functions:

(1) providing medical care without regard to the beneficiaries' ability to pay;

(2) providing support or relief of orphans, delinquent, dependent, or handicapped children in need of residential care, abused or battered spouses or children in need of temporary shelter, the impoverished, or victims of natural disaster without regard to the beneficiaries; ability to pay;

(3) providing support to elderly persons or the handicapped without regard to the beneficiaries' ability to pay;

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(4) preserving a historical landmark or site;

(5) promoting or operating a museum, zoo, library, theater of the dramatic arts, or symphony orchestra or choir;

(6) promoting or providing humane treatment of animals;

(7) acquiring, storing, transporting, selling, or distributing water for public use;

(8) answering fire alarms and extinguishing fires with no compensation or only nominal compensation to the members of the organization;

(9) promoting the athletic development of boys or girls under the age of 18 years;

(10) preserving or conserving wildlife;

(11) promoting educational development through loans or scholarships to students;

(12) providing halfway house service pursuant to a certification as a halfway house by the Board of Pardons and Paroles;

(13) providing permanent housing and related social, health care, and educational facilities for persons who are 62 years of age or older without regard to the residents' ability to pay;

(14) promoting or operating an art gallery, museum, or collection, in a permanent location or on tour, that is open to the public;

(15) providing for the organized solicitation and collection for distributions through gifts, grants, and agreements to nonprofit charitable, education, religious, and youth organizations that provide direct human, health, and welfare services;

(16) performing biomedical or scientific research or biomedical or scientific education for the benefit of the public; or

(17) operating a television station that produces or broadcasts educational, cultural, or other public interest programming and that receives grants from the Corporation for Public Broadcasting under 47 U.S.C. Section 396.

(e) A charitable organization must be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain and, if the organization performs one or more of the charitable functions specified by Subsection (d) of this section other than a function specified In Subdivision (1), (2), (8), (9), (12), or (16), be organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act.

(f) A charitable organization must, by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(1) pledge its assets for use in performing the organization's charitable functions; and

(2) direct that on discontinuance of the organization by dissolution or otherwise:

(A) the assets are to be transferred to this state or to an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986, as amended; or

(B) if required for the organization to qualify as a tax-exempt organization under Section 501(c)(12), Internal Revenue Code of 1986, as amended, the assets are to be transferred directly to the organization's members, each of whom, by application for an acceptance of membership in the organization, has agreed to immediately transfer those assets to this state or to an educational, religious, charitable, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986, as amended, as designated in the bylaws, charter, or regulation adopted by the organization.

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(g) A charitable organization that performs a charitable function specified by Subsection (d)(15) of this section must:

(1) be affiliated with a state or national organization that authorizes, approves, or sanctions, volunteer charitable fund raising organizations;

(2) qualify for exemption under Section 501(c)(3), Internal Revenue Code of 1986, as amended;

(3) be governed by a volunteer board of directors; and

(4) distribute contributions to at least five other associations to be used for general charitable purposes, with all recipients meeting the following criteria:

(A) be governed by a volunteer board of directors;

(B) qualify for exemption under Section 501(c)(3), Internal Revenue Code of 1986, as amended;

(C) receive a majority of annual revenue from private or corporate charitable gifts and governmental agencies; and

(D) provide services without regard to the ability of persons receiving the services to pay for the services.

(h) Performance of noncharitable functions by a charitable

organization that owns or uses exempt property does not result in loss of an exemption authorized by this section if those other functions are incidental to the organization's charitable functions.

(i) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

(j) The exemption of an organization preserving or conserving wildlife is limited to land and improvements and may not exceed 1,000 acres in any one county.

***Sec. 11.19. Youth Spiritual, Mental, and Physical Development.***

(a) An association that qualifies as a youth development association as provided by Subsection (d) of this section is entitled to an exemption from taxation of the tangible property that:

(1) is owned by the association;

(2) except as permitted by Subsection (b) of this section, is used exclusively by qualified youth development associations; and

(3) is reasonably necessary for the operation of the association.

(b) Use of exempt tangible property by persons who are not youth development associations qualified as provided by Subsection (d) of this section does not result in the loss of an exemption under this section if the use is

incidental to use by qualified associations and benefits the individuals the associations serve.

(c) An association that qualifies as youth development associations as provided by Subsection (d) of this section is entitled to an exemption from taxation of those endowment funds the association owns that are used exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(d) To qualify as a youth development association for the purposes of this section, an association must:

(1) engage primarily in promoting the threefold spiritual, mental and physical development of boys, girls, young men, or young women;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain;

(3) operate in conjunction with a state or national organization that is organized and operated for the same purpose as the association; and

(4) by charter, bylaw, or other regulation adopted by the association to govern its affairs:

(A) pledge its assets for use in performing the association's youth development functions; and

(B) direct that on discontinuance of the association by dissolution or otherwise the assets are to be transferred to this state or to a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

***Sec. 11.20. Religious Organizations.***

(a) An organization that qualifies as a religious organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of:

(1) the real property that is owned by the religious organization, is used primarily as a place of regular religious worship, and is reasonably necessary for engaging in religious worship;

(2) the tangible personal property that is owned by the religious organization and is reasonably necessary for engaging in worship at the place of worship specified in Subdivision (1) of this subsection;

(3) the real property that is owned by the religious

organization and is reasonably necessary for use as a residence (but not more than one acre of land for each residence) if the property.

(A) is used exclusively as a residence for those individuals whose principal occupation is to service in the clergy of the religious organization; and

(B) produces no revenue for the religious organization;

(4) the tangible personal property that is owned by the religious organization and is reasonably necessary for use of the residence specified by Subdivision (3) of this subsection; and

(5) the real property owned by the religious organization consisting of:

(A) an incomplete improvement that is under active construction or other physical preparation and that is designed and intended to be used by the religious organization as a place of regular religious worship when complete; and

(B) the land on which the incomplete improvements is located that will be reasonably necessary for the religious organization's use of the improvement as a place of regular religious worship.

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(b) An organization that qualifies as a religious organization as provided by Subsection (c) of this section is entitled to an exemption from taxation of those endowment funds the organization owns that are used exclusively for the support of the religious organizations and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(c) To qualify as a religious organization for the purposes of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) be organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain; and

(3) by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(A) pledge its assets for use in performing the organization's religious functions; and

(B) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state or to a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

(d) Use of property that qualifies for the exemption prescribed by Subdivision (1) or (2) of Subsection (a) of this section for occasional secular purposes other than religious worship does not result in loss of the exemption if the primary use of the property is for religious worship and all income from the other use is devoted exclusively to the maintenance and development of the property as a place of religious worship.

(e) For the purposes of this section, "religious worship" means individual or group ceremony or meditation, education, and fellowship, the purpose of which is to manifest or develop reverence, homage, and commitment in behalf of a religious faith.

(f) A property may not be exempted under Subsection (a)(5) of this section for more than two years.

***Sec. 11.21. Schools.***

(a) A person is entitled to an exemption from taxation of the buildings and tangible personal property that he owns and that are used for a school that is qualified as provided by Subsection (d) of this section if:

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(1) the school is operated exclusively by the person owning the property,

(2) except as permitted by Subsection (b) of this section, the buildings and tangible personal property are used exclusively for educational functions; and

(3) the buildings and tangible personal property are reasonably necessary for the operation of the school.

(b) Use of exempt tangible property for functions other than educational functions does not result in loss of an exemption authorized by this section if those other functions are incidental to use of the property for educational functions and benefit the students or faculty of the school.

(c) A person who operates a school that is qualified as provided by Subsection (d) of this section is entitled to an exemption from taxation of those endowment funds he owns that are used exclusively for the support of the school and are invested exclusively in bonds, mortgages, or property purchased at a foreclosure sale for the purpose of satisfying or protecting the bonds or mortgages. However, foreclosure-sale property that is held by an endowment fund for longer than the two-year period immediately following purchase at the foreclosure sale is not exempt from taxation.

(d) To qualify as a school for the purpose of this section, an organization (whether operated by an individual, as a corporation, or as an association) must:

(1) normally maintain a regular faculty and curriculum and normally have a regularly organized body of students in attendance at the place where its educational functions are carried on;

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain, and if the organization is a corporation, be organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act; and

(3) by charter, bylaw, or other regulation adopted by the organization to govern its affairs:

(A) pledge its assets for use in performing the organization's educational functions; and

(b) direct that on discontinuance of the organization by dissolution or otherwise the assets are to be transferred to this state or to an educational, charitable, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954, as amended.

(e) In this section, "building" includes the land that is reasonably necessary for use of, access to, and ornamentation of the building.

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***Sec. 11.22. Disabled Veterans.***

(a) A disabled veteran is entitled to an exemption from taxation of a portion of the assessed value of a property he owns and designates as provided by Subsection (f) of this section in accordance with the following schedule:

| | for a disability rating of | |
|---|---|---|
| an exemption of up to: | at least: | but not greater than: |
| $ 1, 500 of the assessed value | 10% | 30% |
| 2,000 | 31 | 50 |
| 2,500 | 51 | 70 |
| 3,000 | 71 and over | |

(b) A disabled veteran is entitled to an exemption from taxation of $3,000 of the assessed value of property he owns and designates as provided by Subsection (f) of this section if the veteran,

(1) is 65 years of age or older and has a disability rating of at least 10 percent;

(2) Is totally blind in one or both eyes; or

(3) has lost the use of one or more limbs.

(c) If a disabled veteran who is entitled to an exemption by Subsection (a) *or* (b) of this section dies, the veteran's surviving spouse is entitled to an exemption from taxation of a portion of the assessed value of a properly the spouse owns and designates as provided by Subsection (f) of this section. The amount of the exemption is the amount of the veteran's exemption at

time of death. The spouse is entitled to an exemption by this subsection only for as long as the spouse remains unmarried. If the spouse does not survive the veteran, each of the veteran's surviving children who is younger than 18 years of age and unmarried is entitled to an exemption from taxation of a portion of the assessed value of a property the child owns and designates as provided by Subsection (f) of this section. The amount of exemption for each eligible child is computed by the number of eligible children.

(d) If an individual dies while on active duty as a member of the armed services of the United States:

(1) the individual's surviving spouse is entitled to an exemption from taxation of $2,500 of the assessed value of the property the spouse owns and designates as provided by Subsection (f) of this section; and

(2) each of the individual's surviving children who is younger than 18 years of age and unmarried is entitled to an exemption from taxation of a portion of the assessed value of a property the child owns and designates as provided by Subsection (f) of this section, the amount of exemption for each eligible child to be computed by dividing $2,500 by the number of eligible children.

(e) An individual who qualifies for more than one exemption authorized by this section is entitled to aggregate the amounts of the exemptions, except that:

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(1) a disabled veteran who qualifies for more than one exemption authorized by Subsection (a) and (b) of this section is entitled to only one exemption but may choose the greatest exemption for which he qualifies; and

(2) an individual who receives an exemption as a surviving spouse of a disabled veteran as provided by Subsection (c) of this section may not receive an exemption as a surviving child as provided by Subsection (c) or (d) of this section.

(f) An individual may receive an exemption to which he is entitled by this section against only one property, which must be the same for every taxing unit in which the individual claims the exemption. If an individual is entitled by Subsection (e) of this section to aggregate the amounts of more than one exemption, he must take the entire aggregated amount against the same property. An individual must designate on his exemption application form the property against which he takes an exemption under this section.

(g) An individual is not entitled to an exemption by this section unless he is a resident of this state.

(h) In this section:

(1) "Child" includes an adopted child or a child born out of wedlock whose paternity has been admitted or has been established in an legal action.

(2) "Disability rating" means a veteran's percentage of

disability as certified by the Veterans' Administration or its successor or the branch of the armed services in which the veteran served.

(3) "Disabled veteran" means a veteran of the armed services of the United States who is classified as disabled by the Veterans' Administration or its successor or the branch of the armed services in which the veteran served and whose disability is service-connected.

(4) "Surviving spouse" means the individual who was married to a disabled veteran or member of the armed services at the time of the veteran's or member's death.

***Sec. 11.23. Miscellaneous Exemptions.***

(a) Veteran's Organizations. A nonprofit organization that is composed primarily of members or former members of the armed forces of the United States or its allies and that is chartered or incorporated by the United States Congress is entitled to an exemption from taxation of each of the buildings (including the land that is reasonably necessary for use of, access to, and ornamentation of the buildings) and other property owned and primarily used by that organization if the property is not used to produce revenue or held for gain. Occasional renting of the post or chapter property for other nonprofit activities does not result in loss of the exemption provided by this subsection, an organization is a nonprofit organization if it is organized and operated in a way that does not result in the accrual of

distributable profits, realization of private gain from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain.

(b) Federation of Women's Clubs. The Texas Federation of Women's Clubs is entitled to an exemption from taxation of the tangible property it owns if the property is not held for gain.

(c) Nature Conservancy of Texas. The Nature Conservancy of Texas, Incorporated, is entitled to an exemption from taxation of the tangible property it owns if the property is not held for gain, as long as the organization is a nonprofit corporation as defined by the Texas Non-Profit Corporation Act.

(d) Congress of Parents and Teachers. The Texas Congress of Parents and Teacher's is entitled to an exemption from taxation for state and county purposes of the buildings (including the land that is reasonably necessary for use of, access to, and ornamentation of the buildings) it owns and uses as its state headquarters.

(e) Private Enterprise Demonstration Associations. An association that engages exclusively in conducting nonprofit educational programs designed to demonstrate the American private enterprise system to children and young people and that operates under a state or national organization that is organized and operated for the same purpose is entitled to an exemption from taxation of the tangible property that it

owns and uses exclusively if it is reasonably necessary for the association's operation.

(f) Buffalo and Cattalo. A person is entitled to an exemption from taxation of the buffalo and cattalo he owns that are not held for gain and that are used in experimental breeding with cattle for the purpose of producing an improved strain of meat animal or kept in parks to preserve the species.

(g) Theater Schools. A corporation that is organized to promote the teaching and study of the dramatic arts is entitled to an exemption from taxation of the property it owns and uses in the operation of a school for the dramatic arts if:

(1) the corporation is organized as a nonprofit corporation as defined by the Texas Non-Profit Corporation Act;

(2) the corporation is not self-sustaining in any fiscal year from income other than gifts, grants, or donations;

(3) the corporation is exempt from federal income taxes;

(4) the school maintains a theater-school program with regular classes for at least four grades, formal textbooks and curriculum, an enrollment of 150 or more students during each of at least two semesters every calendar year, and a faculty substantially all of whom hold degrees in theater arts from an accredited school of higher education;

(5) the school offers apprenticeship or other practical training in theater management and operation for college students or offers similar training for playwrights, actors, and production personnel; and

(6) more than one-half of each season's theatrical productions for which admission is charged have significant literary merit of the character that contributes to the educational programs of secondary schools and schools of higher education.

(h) Repealed January 1, 1988.

(i) Community Service Clubs. An association that qualifies as a community service club is entitled to an exemption from taxation of the tangible property the club owns that qualifies under Article VIII, Section 2, of the constitution and that is not used for profit or held for gain. To qualify as a community service club for the purposes of this subsection, an association must:

(1) be organized to promote and must engage primarily in promoting:

(A) the religious, educational, and physical development of boys, girls, young men, or young women;

(B) the development of the concepts of patriotism and love of country; and

(C) the development of interest in community, national, and international affairs;

(2) be affiliated with a state or national organization of similar purpose;

(3) be open to membership without regard to race, religion, or national origin; and

(4) be operated in a way that does not result in accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain.

(j) Medical Center Development. All real and personal property owned by a nonprofit corporation, as defined in the Texas Nonprofit Corporation Act, and held for use in the development of a medical center area or areas in which the nonprofit corporation has donated land for a state medical, dental, or nursing school, and for other hospital, medical, and educational uses and uses reasonably related thereto, during the time remaining property is held for the development to completion of the medical center and not leased or otherwise used with a view to profit, is exempt from all ad valorem taxation as though the property were, during that time, owned and held by the state for health and educational purposes.

(k) Scientific Research Corporations. A nonprofit corporation as defined in the Texas Non-Profit Corporation Act is entitled to an exemption from taxation of the property it owns and uses in scientific research and educational activities for the benefit of one

or more colleges and universities. Use of property exempted by this subsection for purposes other than scientific research and education does not result in loss of the exemption of those other functions are incidental to use of the property for scientific research and education activities and benefit the scientific research corporation and the colleges or universities that it supports.

***Sec. 11.24. Historic Sites.***

The governing body of a taxing unit by official action of the body adopted in the manner required by law for official actions may exempt from taxation part or all of the assessed value of a structure and the land necessary for access to and use of the structure, if the structure is:

(1) designed as a Recorded Texas Historical Landmark by the Texas Historical Commission and by the governing body of the taxing unit; or

(2) designated as a historically significant site in need of tax relief to encourage its preservation pursuant to an ordinance or other law adopted by the governing body of the unit.

***Sec. 11.251. Tangible Personal Property Transported Outside the State.***

(a) In this section, "freeport goods" means property that under Article VIII Section 1-j, of the Texas Constitution is not taxable.

(b) A person is entitled to an exemption from taxation of the appraised value of that portion of the person's inventory or property consisting of freeport goods.

(c) The exemption provided by Subsection (b) is subtracted from the market value of the inventory or property determined Under Section 23.12 to determine the taxable value of the inventory or property.

(d) Except as provided by Subsections (f) and (g), the chief appraiser shall determine the appraiser shall determine the percentage of the market value of inventory or property owned by the property owner in the preceding calendar year that was contributed by freeport goods. The chief appraiser shall apply that percentage to the market value of the property owner's inventory or property for the current year to determine the appraised value of freeport goods for the current year.

(e) In determining the market value of freeport goods that in the preceding year were assembled, manufactured, repaired, maintained, processed, or fabricated in this state or used by the person who acquired or imposed the property in the repair or maintenance of aircraft operated by a certificated air carrier, the chief appraiser shall exclude the cost of equipment, machinery, or materials that entered into and became component parts of the freeport goods but were not themselves freeport goods or that were not transported outside the state before the expiration of 175 days after they were brought into this state by the property owner or acquired by the property owner in this state. For component parts held in bulk, the chief appraiser may use the average length of time a component part was held in this state by

the property owner during the preceding year in determining whether the component parts were transported out of this state before the expiration of 175 days.

(f) If the property owner was not engaged in transporting freeport goods out of this state for the entire preceding year, the chief appraiser shall calculate the percentage of cost described in Subsection (d) for the portion of the year in which the property owner was engaged in transporting freeport goods out of this state,

(g) If the property owner or the chief appraiser demonstrates that the method provided by Subsection (d) significantly understates or overstates the market value of the property qualified for exemption under Subsection (b) in the current year, the chief appraiser shall determine the market value of the freeport goods to be exempt by determining, according to the property owner's records and any other available information, the market value of those freeport goods owned by the property owner on January 1 of the current year, excluding the cost of equipment, machinery, or materials that entered into and became component parts of the freeport goods but were not themselves freeport goods or that were not transported outside the state before the expiration of 175 days after they were brought into this state by the property owner or acquired by the property owner in this state.

(h) The chief appraiser by written notice delivered to a property owner who claims an exemption under this section may require the property owner to provide copies of inventory or property records in order to

determine the amount and value of freeport goods. If the property owner falls to deliver the information requested in the notice before the 31st day after the date the notice is delivered to the property owner, the property owner forfeits the tight to claim or receive the exemption for that year. The exemption provided by Subsection (b) does not apply to a taxing unit that takes action to tax the property under Article VIII, Section 1-j, Subsection (b), of the Texas Constitution.

(j) Petroleum products as set forth in Article VIII, Section 1-1, of the Texas Constitution shall mean liquid and gaseous materials that are the immediate derivatives of the refining of oil or natural gas.

***Sec. 11.27. Solar and Wind-Powered Energy Devices.***

(a) A person is entitled to an exemption from taxation of the amount of appraised vale of his property that arises from the installation or constructing of a solar or wind-powered energy device that is primarily for production and distribution of energy for on-site use.

(b) The comptroller, with the assistance of the Texas Energy and Natural Resources Advisory Council, or its successor, shall develop guidelines to assist local officials in the administration of this section.

(c) In this section:

(1) "Solar energy device" means an apparatus designed or adapted to convert the radiant energy from the sun, including energy imparted to plants

through photosynthesis employing the bioconversion processes of anaerobic digestion, gasification, pyrolysis, or fermentation, but not including direct combustion, into thermal, mechanical, or electrical energy; to store the converted energy, either in the form to which originally convened or another form; or to distribute radiant solar energy or the energy to which the radiant solar energy is converted.

(2) "Wind-powered energy device" means an apparatus designed or adapted to convert the energy available in the wind into thermal, mechanical, or electrical energy; to store the converted energy, either in form to which originally converted or another form; or to distribute the converted energy.

***Sec. 11.271. Offshore Drilling Equipment Not in Use.***

An owner or lessee of a marine or mobile drilling unit designed for offshore drilling of oil or gas wells is entitled to an exemption from taxation of the drilling unit if the drilling unit:

(1) is being stored in a county bordering on the Gulf of Mexico or on a bay or other body of water immediately adjacent to the Gulf of Mexico;

(2) is not being stored for the sole purpose of repair or maintenance; and

(3) is not being used to drill a well at the location at which it is being stored.

*Appendix A*

***Sec. 11.29. Intracoastal Waterway Dredge Disposal Site.***

(a) A person is entitled to an exemption from taxation of land that the person owns and that has been dedicated by recorded donated easement dedicating said land as a disposal site for depositing and discharging materials dredged from the main channel of the Gulf Intracoastal Waterway by or under the direction of the state or federal government.

(b) An exemption granted under this section terminates when the land ceases to be used as an active dredge material disposal site described by Subsection (a) of this section and is no longer dedicated for that purpose.

***Sec. 11.30. Nonprofit Water Supply or Wastewater Service Corporation.***

A corporation organized under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes), that provides in the bylaws of the corporation that on dissolution of the corporation the assets of the corporation remaining after discharge of the corporation's indebtedness shall be transferred to an entity that provides a water supply or wastewater service, or both, that is exempt from ad valorem taxation is entitled to an exemption from taxation of property that the corporation owns and that is reasonably necessary for and used in the operation of the corporation:

(1) to acquire, treat, store, transport, sell, or distribute water; or

(2) to provide wastewater service.

*Appendix A*

***Sec. 23.13. Taxable Leaseholds.***

A taxable leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest is appraised at the market value of the leasehold or other possessory interest. However, the appraised value may not be less than the total rental paid for the interest for the current tax year.

***Sec. 25.07. Leasehold and Other Possessory Interests in Exempt Property.***

(a) Except as provided by Subsection (b) of this section, a leasehold or other possessory interest in real property that is exempt from taxation to the owner of the estate or interest encumbered by the possessory interest shall be listed in the name of the owner of the possessory interest if the duration of the interest may be at least one year.

(b) Except as provided by Subsections (b) and (c) of Section 11.11 of this code, a leasehold or other possessory interest in exempt property may not be listed if:

(1) the property is permanent university fund land;

(2) the property is county public school fund agricultural land;

(3) the property is a part of a public transportation facility owned by an incorporated city or town and:

(A) is an airport passenger terminal building or a building used primarily for maintenance of

aircraft or other aircraft services, for aircraft equipment storage, or for air cargo;

(B) is an airport fueling system facility;

(C) is in a foreign-trade zone:

(i) that has been granted to a joint airport board under Chapter 129, Acts of the 65th Legislature, Regular Session, 1977 (Article 1446.8, Vernon's Texas Civil Statutes);

(ii) the area of which in the portion of the zone located in the airport operated by the joint airport board does not exceed 2,500 acres; and

(iii) that is established and operating pursuant to federal law; or

(D)

(i) is in a foreign trade zone established pursuant to federal law after June 1, 1991, which operates pursuant to federal law;

(ii) is contiguous to or has access via a taxiway to an airport located in two counties, one of which has a population of 500,000 or more according to the federal decennial census most recently

preceding the establishment of the foreign trade zone; and

(iii) is owned, directly or through a corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), by the same incorporated city or town which owns the airport;

(4) the interest is in a part of a park, market, fairground, or similar public facility that is owned by an incorporated city or town; or

(5) the interest involves only the right to use the property for grazing or other agricultural purposes.

## APPENDIX B —VERNON'S TEXAS CODES ANNOTATED, CIVIL PRACTICE AND REMEDIES

***Sec. 37.001 Definition.***

In this chapter, "person" means an individual, partnership, joint-stock company, unincorporated association or society, or municipal or other corporation of any character.

***Sec. 37.002. Short Title, Construction, Interpretation.***

(a) This chapter may be cited as the Uniform Declaratory Judgments Act.

(b) This chapter is remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

(c) This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

***Sec. 37.003 Power of Courts to Render Judgment; Form and Effect.***

(a) A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. An action or proceeding is not open to objection on the ground that a declaratory judgment or decree is prayed for.

*Appendix B*

(b) The declaration may be either affirmative or negative in form and effect, and the declaration has the force and effect of a final judgment or decree.

(c) The enumerations in Sections 37.004 and 37.005 do not limit or restrict the exercise of the general powers conferred in this section in any proceeding in which declaratory relief is sought and a judgment or decree will terminate the controversy or remove an uncertainty.

***Sec. 37.006 Parties***

(a) When declaratory relief is sought, all person who have or claim any interest that would be affected by the declaration must be made parties. A declaration does not prejudice the rights of a person not a party to the proceeding.

(b) In any proceeding that involves the validity of a municipal ordinance or franchise, the municipality must be made a party and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state must also be served with a copy of the proceeding and is entitled to be heard.